



Georgia J1 Visa Waiver Policy

Georgia Department of Community Health
Office of Rural Health Services
Primary Care Office
J1 Visa Waiver Program

Office of Rural Health Services
J1 Visa Waiver Program
502 South 7th Street
Cordele, Georgia 31015-1443

Office of Rural Health Services

INTRODUCTION

Georgia welcomes physicians holding J1 Visas who wish to practice in a Federally-designated Health Professional Shortage Area (HPSA), a Federally-designated Medically Underserved Area (MUA) or a Federally Qualified Health Center (FQHC). The State processes J1 Visa Waiver applications through the Georgia Department of Community Health's Office of Rural Health Services (DCH/ORHS).

The Department of Community Health is committed to improving the health of all Georgians through health benefits, systems development and education. As one Office within DCH, ORHS' mission is to optimize the health status and eliminate the health disparities of persons in rural and underserved areas of Georgia through the development of regional systems of quality healthcare.

The purpose of the Georgia J1 Visa Waiver Program is to improve access to quality healthcare in underserved communities of Georgia by sponsoring international medical graduates holding J1 Visas. The J1 Visa Waiver Program is but one recruitment tool offered to communities by ORHS. This Program is not intended to replace a viable search for a graduate of an American medical school. The J1 Program is designed to be consistent with other laws, regulations, health care programs and policies of the state of Georgia, the U.S. Department of State (DOS), the United States Citizenship and Immigration Services (USCIS) and the Appalachian Regional Commission (ARC).

Physicians admitted to Georgia's J1 Program are held accountable to the protocols outlined in this document, as are healthcare facilities which employ J1 physicians. A physician who fails to uphold this Policy after being admitted to the Program, risks being reported as noncompliant to the USCIS, which may ultimately result in deportation. A facility that fails to comply with this Policy risks eligibility for future participation in the J1 Program.

ORHS staff are available to answer questions about the J1 Visa Waiver Program, facilitate placements, assist with the application process and provide support throughout the waiver obligation period. Please do not hesitate to give us a call at 229-401-3090.

APPLICABLE FEDERAL LAW-J1 VISA WAIVERS

A nonimmigrant *temporarily* enters the United States for a *specific* purpose. Exchange visitors are nonimmigrants (J-1 status) who participate in the Exchange Visitor Program. This program, which is administered by the Bureau of Consular Affairs of the Department of State, seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Accordingly, many exchange visitors entering the United States are subject to a requirement that they return to their home country to share with their countrymen the knowledge, experience and impressions gained during their stay in the United States. Unless USCIS approves a waiver for this requirement, exchange visitors must depart from the United States and live in their country of residence for two years before they are allowed to apply for an immigrant visa, permanent residence, or change to a new nonimmigrant status.

Office of Rural Health Services

The Immigration and Nationality Act is the law that governs the admission of all foreign nationals to the United States. For the part of the law about the foreign residence requirement, please see INA § 212e and INA § 214. The Code of Federal Regulations [CFR] discusses the foreign residence requirement for exchange visitors at 8 CFR § 212.7.

Exchange visitors who are subject to, but do not wish to comply with, the two-year home country residence requirement, may apply for a waiver of that requirement under five applicable grounds including a request by a U.S. Government Agency or a State Department of Health; this is known as a J1 Visa Waiver.

It is important to note that a Waiver is not a visa and does not confer the right to work. The Waiver only authorizes the applicant to remain in the USA rather than comply with the two-year home residency requirement. In order to legally work, the J1 physician must also successfully apply for a H1-B visa.

For more information:

<http://travel.state.gov/jvw.html>

<http://uscis.gov/graphics/howdoi/exchvisit.htm>

APPLICABLE FEDERAL LAW-H1B VISAS

The H1B is a nonimmigrant classification used by an alien who will be employed temporarily in a specialty occupation. H1B status requires a sponsoring U.S. employer. The employer must file a labor condition application (LCA) with the Department of Labor attesting to several items, including payment of prevailing wages for the position, and the working conditions offered. Based on the USCIS petition approval, the alien may apply for the H1B visa, admission, or a change of nonimmigrant status. H1B aliens may work only for the petitioning U.S. employer and only in the H1B activities described in the petition.

As long as the alien continues to provide H1B services for a U.S. employer, most changes will not mean that an alien is out of status. An alien may change H1B employers without affecting status, but the new H1B employer must file a new Form I-129 petition for the alien before he or she begins working for the new employer. Physicians holding an H1B Visa, are permitted to work only for the H1B petitioning employer and only at the authorized locations noted on the H1B petition and the labor condition application. If a new work location is added, etc., an amended petition must be filed with USCIS before the physician commences work at new locations, even if the employment is for the same employer.

For more information:

<http://travel.state.gov/visa;tempwkr.html>

<http://uscis.gov/graphics/services/tempbenefits/tempworker.htm>

<http://workforcesecurity.doleta.gov/foreign/>

Office of Rural Health Services

APPLICABLE FEDERAL LAW-NATIONAL INTEREST WAIVERS

Foreign nationals who are members of the professions holding advanced degrees or aliens of exceptional ability and wish to remain permanently in the USA may obtain an immigrant visa if they have a job offer from a U.S. employer. This category of workers is known as the employment-based second preference category, and it is normally subject to the lengthy labor certification requirement.

The labor certification requirement for this category can be waived, however, in the national interest. The petitioner or self-petitioner must submit the evidence required with Form I-140 to support the request for a national interest waiver (NIW). Such evidence includes a letter (issued and dated within six months prior to the date on which the petition is filed) from a Federal agency or State Department of Health attesting that the alien physician's work is or will be in the public interest. USCIS will not approve NIWs for J1 physicians who have been issued a Waiver, but who have not complied with its terms.

An attestation from the State Department of Health must reflect that the agency has jurisdiction over the place where the alien physician intends to practice. If the alien physician intends to practice in more than one area, attestations from each intended area of practice must be included. The physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date USCIS issues the necessary employment authorization document.

For more information:

<http://uscis.gov/graphics/services/residency/physwaiver.htm>

J1 VISA WAIVER RECOMMENDATION IN GEORGIA

DCH/ORHS are responsible for interpretation of this Policy. The factors that will determine recommendation of a Waiver will be based on, but not limited to, the following:

1. Compliance with State and Federal laws and regulations;
2. Need for the service;
3. Community support for the placement;
4. Employer's commitment to treating patients regardless of their ability to pay;
5. Physician's intent to work with medically underserved long-term;
6. Effect of placement on other programs and policies of Georgia.

Under the Georgia J1 Visa Waiver Program, recommendation and placement of physicians in shortage areas are based, in part, upon critical need of the area and specific address of the facility. The specific location where the physician will work, which is specified in the J1 Visa Waiver Application, should also be the location cited on the H1B visa petition.

Office of Rural Health Services

HEALTHCARE FACILITY ELIGIBILITY

A Georgia healthcare facility wishing to hire a J1 physician must meet the following requirements:

1. Be located in a currently designated Health Professional Shortage Area (HPSA) or a currently designated Medically Underserved Area (MUA) or be a Federally Qualified Health Center (FQHC).
Note: if location is de-designated before application has been recommended by ORHS, application will be denied and returned to petitioner;
2. Be currently in operation or ready to operate when the J1 physician commences employment;
3. Agree to charge patients at the usual and customary rate prevailing in that area, unless a patient is unable to pay;
4. Agree to have a written policy of non-discrimination of patients posted where patients can easily see it;
5. Agree to charge uninsured patients on a sliding fee scale schedule, based on current Federal poverty guidelines and post notice of fee scale where patients can easily see it;
6. Agree to accept assignment under Section 1842(b)(3)(ii) of the Social Security Act as full payment for all services for which payment may be made under Part B of Title XVII of such Act (Medicare) and post notice where patients can easily see it;
7. Agree to enter into an agreement with the Georgia agency which administers the State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) to provide services to individuals entitled to medical assistance under the plan and post notice where patients can easily see it;
8. Recruit for U.S. medical graduates at least six months before signing a contract with a J1 physician and submitting J1 Visa Waiver application;
9. Agree to sponsor the J1 physician's H1B visa for three years and to execute an appropriate employment contract;
10. Agree to notify ORHS, in writing, of physician start date within 30 days of said date;
11. Agree to submit semiannual reports to ORHS;
12. Agree to notify ORHS, in writing, of any change in the employment contract within 30 days of said change;
13. Agree to site visits by ORHS staff and
14. Agree to uphold this policy in its entirety.

Note: a single employer may not apply for more than three waivers per Federal fiscal year even if the employer has multiple sites. The Federal fiscal year runs October 1-September 30.

J1 PHYSICIAN ELIGIBILITY

A J1 physician wishing to waive the foreign residency requirement by working in Georgia must meet the following requirements:

1. Have current immigration status. For J1 visa holders admitted under duration of status, preference will be given to applicants with current IAP-66. Applicants whose IAP-66 has expired must submit their application within 180 days of IAP-66 expiration date; beyond 180 days the application will be denied.
2. Complete residency/fellowship training from a U.S. medical school;

Office of Rural Health Services

3. Be Board Certified/Eligible;
4. Be already licensed or in the process of applying for licensure to practice medicine in Georgia;
5. Agree to practice for 40 hours per week at the approved site(s) in the approved discipline;
6. Agree to charge patients at the usual and customary rate prevailing in that HPSA, unless a patient is unable to pay;
7. Agree to not discriminate against patients based on ability to pay for services;
8. Agree to charge patients who are unable to pay full price on sliding fee scale schedule, based on current Federal poverty guidelines;
9. Agree to accept assignment under Section 1842(b)(3)(ii) of the Social Security Act as full payment for all services for which payment may be made under Part B of Title XVII of such Act (Medicare);
10. Agree to enter into an agreement with the Georgia agency which administers the State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) to provide services to individuals entitled to medical assistance under the plan;
11. Agree to notify ORHS, in writing, of physician start date within 30 days of said date;
12. Agree to submit semiannual reports to ORHS;
13. Agree to notify ORHS, in writing, of any change in the employment contract within 30 days of said change;
14. Agree to site visits by ORHS staff and
15. Agree to uphold this policy in its entirety.

PRIMARY CARE AND SUB-SPECIALTIES

The Conrad State 30 Program will accept a limited number of sub-specialist applications. The 30 slots will be divided into three categories:

1. 20 Primary Care only: open to physicians who completed a residency program in internal medicine, family practice, pediatrics, obstetrics/gynecology, or psychiatry. Only fellowship training in geriatrics will be accepted under this category.
2. 5 Primary Care/Sub-specialty: open to physicians who completed a residency program in internal medicine, family practice, pediatrics, obstetrics/gynecology, or psychiatry. Fellowship training in any sub-specialty will be accepted under this category. Physicians in this category must agree to practice part-time primary care and part-time sub-specialty.
3. 5 Sub-specialty only: open to physicians who completed a residency program or fellowship in any specialty. Physicians in this category may practice their sub-specialty full-time.

For the purpose of the J-1 Visa Waiver Program, Georgia defines primary health care as services which emphasize first contact patient care and the provider assumes overall and ongoing responsibility for the patient in both health maintenance and treatment of illness. Primary care involves a unique interaction between the patient and the primary care physician. The appropriate use of referrals and community resources is an important part of effective primary care. The purpose of this interaction is to achieve comprehensive coordination of health care including educational, behavioral, biological, and social aspects of care. It is

Office of Rural Health Services

patient care oriented approach that emphasizes the continuity of care over the full spectrum of health services. It begins with patient assessment, wellness, and prevention through medical management, lifestyle modification, and health education. The primary care provider is the patient's advocate through the complex system of health care delivery.

Application requirements for each of the three categories are different so it is important that the applicant be sure to submit the appropriate documentation.

APPLICATION PROCESS

Call or email ORHS for an application form and for assistance in completing the form if needed. Applications are reviewed by ORHS on a first come, first serve basis.

Recommendations will typically be made in the same manner, but priority may be given to a particular application based on need for healthcare services in a certain area or at a certain site. ORHS reserves the right to prioritize applications in this way. In addition, submission of an incomplete application will cause delay in the review process. Applications will not be reviewed until they are complete; therefore it is to the applicant's advantage to ensure all required documentation is included with the initial submission of the application. Complete applications are likely to be recommended before incomplete applications.

High Priority Counties and Sites

Annually ORHS publishes the Primary Care Access Plan which lists the top 40 priority counties based on certain health status indicators. Applications for these counties will be given preference during the review process. Certain sites such as Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs) and Critical Access Hospitals will be surveyed annually about their staffing vacancies. ORHS will assist those sites in filling those vacancies and with submitting a Waiver application if appropriate. Any J1 applications that result from this process will be given priority. Applications from priority counties and sites are not guaranteed recommendation; but again, they will be given preference. Also, applications from non-priority counties and sites may be recommended, although they will not be given preference. Prioritization is based on clearly demonstrated high need for healthcare services and commitment to uninsured and underserved populations.

Conrad State 30 Application Process:

The Conrad State 30 Program operates on the Federal fiscal year cycle and is limited to HPSA- or MUA-designated locations and FQHCs, generally excluding ARC counties. ORHS accepts Conrad State 30 applications beginning in October of every year until the thirty slots are filled. If an application is submitted after the year has closed, it will be returned and may be resubmitted next fiscal year.

1. Applicant sends complete application to ORHS.
2. Upon favorable review by ORHS, the application is forwarded to the United States Department of State.
3. Upon favorable review by the Department of State, the application is forwarded to the United States Citizenship and Immigration Services for approval or denial.

Office of Rural Health Services

Appalachian Regional Commission Process:

ORHS accepts applications on behalf of the Appalachian Regional Commission (ARC) year round for counties in the Appalachian region of the state. ARC does not limit the number of J1 physicians unless the county is already fully served. See <http://www.arc.gov>

1. Applicant sends complete application to ORHS.
2. Upon favorable review by ORHS, the application is forwarded to the Governor's office.
3. The Governor submits a request to ARC.
4. Upon favorable review by ARC, the application is forwarded to the United States Department of State.
4. Upon favorable review by the Department of State, the application is forwarded to the United States Citizenship and Immigration Services for approval or denial.

It is important to distinguish between recommendation and approval of the application. ORHS will review complete applications within six to eight weeks and *recommend* them to the Federal level. A recommendation by ORHS does not guarantee that the application will be *approved* by USCIS and ORHS cannot estimate when USCIS will make a decision. USCIS approval is required to work legally in the United States. Applicants may check the status of their application at the Federal level by calling 202-663-1600, or online at <http://travel.state.gov/jvw.html>, and entering their case number.

Moreover, submission of an application to ORHS does not guarantee that ORHS will recommend the application to the Federal level. Applications that are not recommended will be returned to sender with a letter of denial.

J1 VISA WAIVER PROGRAM MONITORING

Within 30 days of the physician's start date, physician and employer are responsible for submitting a Placement Verification form which is mailed to the employer along with the letter of recommendation. Upon receiving this form, an ORHS staff person will schedule an initial site visit with the physician. Additionally, written reports will be due every six months for the next three years and there may be multiple site visits. All reports must be signed, dated and notarized by physician and employer and must contain accurate information. Forms should be mailed to ORHS. Failure to supply accurate semiannual reports in a timely manner may result in ORHS refusing to issue a letter of support for the physician's continued stay in the US.

All J1 participants will be visited during their three-year obligation. The purpose of the site visit is to verify that the physician and employer meet the eligibility requirements stated above and that annual reports contain accurate information. J1 Program participants will be given advance notice of the site visit date. Program participants will be notified, in writing, of any J1 Policy breaches uncovered in the site visit and will have 30 days to rectify the situation before disciplinary action is taken. Serious violations may warrant the initiation of deportation procedures against the J1 physician and/or limit the participation of the employer in the J1 Program.

Office of Rural Health Services

It is important to understand that ORHS does not have the authority to mediate between employer and employees participating in the J1 Program, to investigate allegations of wrongdoing from either party, or to enforce labor standards. If ORHS becomes aware of such issues, we will recommend seeking advice from an attorney or contacting the appropriate agency (i.e. Medicaid Fraud & Abuse, Department of Labor, United States Citizenship & Immigration Services).

J1 VISA WAIVER TRANSFERS

Like the H1B visa, once a Georgia J1 Visa Waiver application is approved for a specific location, an employer cannot place the physician at another address without first submitting a formal request for transfer and receiving approval from ORHS. This rule applies even if there is no change in employer. Movement of a J1 physician to a location that has not been approved by ORHS will result in the physician being in noncompliance with the program and may be reported as such to USCIS.

ORHS prefers that transfers from one employer to another be a choice of last resort. However, if circumstances warrant a transfer, it will be recommended when the appropriate documentation has been received. If an employer has excessive transfers, the employer will not be eligible for a placement in the next fiscal year. J1 participants wishing to transfer must submit the required documents before the transfer will take place. If all necessary information is provided, ORHS will send a letter of support for transfer to USCIS, DOS or ARC, with a copy to petitioner, within 30 days after receipt of the request.

Once a transfer is complete, the physician and the new employer are required to notify ORHS using a Placement Verification form that will be included with the letter of support for transfer. If the physician is unemployed for a time during the transfer, that time will not count towards the three-year obligation.

Transferring To Another Location Within Georgia, With The Same Employer:

The employer must:

- Notify ORHS, in writing, of the intent to transfer. Detail the reasons for the transfer.
- Provide ORHS with the name of the new practice site, the name of the CEO, complete address for the site, including 9-digit zip code, the 10-digit telephone number, and date the transfer is requested to be effective.
- Continue to uphold the J1 Visa Waiver Policy at the new site.

Transferring To Another Employer Within Georgia:

The physician must:

- Notify ORHS, in writing, of the intent to transfer. Detail the reasons for the transfer.
- Provide ORHS with the name of the new practice site, the name of the CEO, complete address for the site, including 9-digit zip code, the 10-digit telephone number, and date the transfer is requested to be effective.

Office of Rural Health Services

- Continue to uphold the J1 Visa Waiver Policy at the new site.

The original employer must:

- Provide letter to ORHS releasing the physician from employment. Explain reasons for termination.

The new employer must:

- Provide a letter of intent to employ the J1 physician for the remainder of the obligation period.
- Provide a copy of the sliding fee scale.
- Agree, in writing, to the terms of the J1 Visa Waiver Policy.
- Submit a copy of the employment contract.

Transferring from Georgia to Another State:

The physician must:

- Notify ORHS, in writing, of the intent to transfer, detailing the reasons for the transfer.
- Provide the complete name, address and phone number of the new employer and date of transfer.

The original employer must:

- Provide a letter to the ORHS releasing the physician from employment. Explain reasons for termination.

Note: If the original employer refuses to release the J1 physician from the employment contract and the J1 physician believes that the employer is in violation of the employment contract, the J1 physician should seek the advice of legal counsel about terminating the contract. ORHS will not review a transfer request without a letter of release from the original employer, unless the contract has been legally terminated. If a J1 physician terminates the employment contract without cause, the employer has the right to seek Liquidated Damages and should seek the advice of legal counsel. ORHS does not have the authority to determine legal grounds for terminating an employment contract.

NATIONAL INTEREST WAIVERS

ORHS will provide letter of support for National Interest Waiver petitions for J1 physicians in good standing who have completed at least 18 months of service. To obtain such a letter the physician must submit:

- A copy of the physician's current H1B Visa
- If petition has been filed, SRC filing number for I- 140 (please indicate which USCIS office you are petitioning through).
- A copy of the employment agreement indicating a contract extension or new agreement of at least two years (total term=5 years).
- A letter of recommendation from the employer stating why this is in the public interest.
- A letter of intent from the physician explaining interest in working with underserved populations.
- An updated copy of the physician's curriculum vitae.

Office of Rural Health Services

- A copy of the physician's current Georgia License.

Note that if a J1 physician petitions at 18 months, USCIS will consider the HPSA designation at the time of the J1 Visa Waiver application. If the physician petitions after 18 months, USCIS will consider HPSA designation at the current time.

Letter of support for a National Interest Waiver Petition will be sent directly to USCIS, with a copy to the petitioner, within thirty days of receipt of all required information.

RELEASE OF INFORMATION

ORHS will not communicate about the status of a Waiver application being reviewed with anyone other than the healthcare facility, J1 physician or the representative/attorney. If additional information or clarification is needed in order to continue processing the application, ORHS will contact the appropriate party.

Community inquiries about participants in the J1 Program must be submitted by letter to ORHS. The letter must contain the requestor's name, position, address, phone number, reason for requesting the information, and plans for using the information if released. ORHS will evaluate these requests on a case-by-case basis with involvement of DCH's General Counsel if necessary.

A NOTE ABOUT CONTRACTS

The employment contract submitted with the Waiver application should not be altered without notifying ORHS in advance. Employers should not ask the J1 physician to sign addendums to the contract or to sign additional contracts. Likewise, J1 physicians should not accept to sign addendums to the contract or additional contracts at the request of the employer. Additionally, J1 physicians should not sign contracts with other employers as this is in violation of the Georgia prohibition of moonlighting and in violation of the Federal regulations governing H1-B visa holders.

Again, ORHS does not have the authority to mediate contract disputes between employer and employee or to evaluate the legality of a contract. Program participants are advised to seek legal counsel for guidance in these matters.